

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

STANLEY WASHINGTON                      §  
v.    §        CIVIL ACTION NO. 9:05cv184  
DOUGLAS DRETKE                      §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Plaintiff Stanley Washington, proceeding *pro se*, filed this lawsuit complaining of alleged violations of his constitutional rights. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Washington asserted that the Director of TDCJ-CID, the sole named Defendant, violated his civil rights through his committees, such as the Director's Review Committee and the Mailroom Systems Coordination Program by denying him the right to receive a publication called King magazine because it allegedly contained sexually explicit images.

On September 21, 2005, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed as frivolous and duplicative. The Magistrate Judge noted that according to court records, Washington filed another lawsuit, styled Washington v. Dretke, civil action no. 9:05cv175, raising the exact same allegations as are presented in this lawsuit. The Magistrate Judge therefore recommended that this lawsuit be dismissed.

Washington filed objections to the Magistrate Judge's Report on October 11, 2005. These objections state that Washington did not intend to file another lawsuit, but that he was responding to a court order to amend his complaint in cause no. 9:05cv175. When he sent in his

amended complaint, however, it was inadvertently filed as a new lawsuit. Washington asks that this lawsuit be dismissed so that he can proceed in cause no. 9:05cv175.

While the Magistrate Judge did not err in recommending that this lawsuit be dismissed, it is clear from Washington's objections that he did not intend to file a second lawsuit raising the same allegations that were already before the Court. It is accordingly

ORDERED that the Plaintiff's request for voluntary dismissal of this lawsuit, made in his objections dated October 11, 2005, is GRANTED. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED without prejudice. Washington may pursue his claims in the other lawsuit which he has filed before the Court. It is further

ORDERED that the dismissal of this lawsuit shall not count as a strike for purposes of 28 U.S.C. §1915(g). It is further

ORDERED that no fees shall be charged to the Plaintiff as a result of the above-styled and numbered lawsuit. This shall not affect any fees or court costs which may be associated with cause no. 9:05cv175. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So **ORDERED** and **SIGNED** this **10** day of **November, 2005**.



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Ron Clark, United States District Judge